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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re G. T. et al., Persons Coming Under the Juvenile Court Law.	
ORANGE COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. GABRIEL T., SR., Defendant and Appellant.	G046727 (Super. Ct. Nos. DP021112 & DP021113) O P I N I O N

Appeal from orders of the Superior Court of Orange County, Jane Shade, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Maryann M. Milcetic, under appointment by the Court of Appeal, for Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Debbie Torrez, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minor.

* * *

Gabriel T. (father) appeals from the juvenile court's jurisdictional and dispositional orders (Welf. & Inst. Code, § 300), inter alia, removing custody of his now 10- and 8-year-old sons G.T. and T.A.T. (A.T.) from him and vesting it with their mother. He contends the court erred in excluding certain evidence, refusing to admit deposition testimony, and denying his request for expert psychological evaluations under Evidence Code section 730 (all further statutory references are to this code unless otherwise stated). Finding no error, we affirm.

FACTS AND PROCEDURAL BACKGROUND

Married in 1999, father and mother had two children, G.T. and A.T. As infants, the children lived with their maternal grandparents in Romania while mother graduated from medical school. Father and mother divorced in 2007 and father took custody of the children. When they remarried in 2008, they brought G.T. to Alabama to live with them. Mother then started her residency in California, leaving G.T. with father in Alabama. In mid-2009 A.T. moved to California to live with mother and both parents filed for divorce in their respective states.

In January 2010, G.T. also moved to California to live with mother, A.T., and his maternal grandmother. That summer, a psychiatrist, Dr. Ziegler, diagnosed G.T. as suffering from suicidal ideation and Post Traumatic Stress Disorder (PTSD). When faced with the prospect of seeing father, G.T. stated he "wishe[d] he were dead" and any contact, including telephone calls, "result[ed] in prolonged panic like episodes."

In February 2011, the Alabama court issued a divorce decree, awarding custody to mother during the school year and father during school breaks and holidays. That April, G.T., then 8 years old, attempted to kill himself with a knife because he feared visiting father during spring break, stating he would do it again and "would rather

die than to have to visit . . . father . . . ." He was placed on a psychiatric hold and another doctor, Dr. Pham, diagnosed him with PTSD and "depressive disorder."

Orange County Social Services Agency (SSA) filed a dependency petition on behalf of both children. G.T. told SSA the previous December during a visit, father had hit him in the face and back, leaving bruises, and had also hit A.T., giving him a black eye. G.T. also saw father hit mother and try to strangle her. Both children feared father. Police reports confirmed mother and father engaged in domestic violence in the children's presence.

In a two-hour recording made by father of the December visit, which was monitored by Alabama court-appointed therapist Laurie Shoemaker, the children were heard crying, "'Stay away from me. I don't want to go with you. I don't want you to touch me.'" Both children were crying and screaming as mother helped get them into the car. In the car, G.T. stated he did not trust father, who he believed was going to kidnap him.

When the children returned to California after the December visit, mother reported seeing bruises on them. When Shoemaker was shown the pictures of the bruises by mother's attorney, she referred the children to a therapist in California, Taube Levitt. Levitt began seeing the children weekly two months before G.T.'s attempted suicide and diagnosed both children as suffering from PTSD. Both children feared father, having to visit him, or even going to school or riding on the school bus because they believed he might show up and take them away from mother. G.T. had suicidal ideations and worried about mother's safety because he had seen father beat her up and give her black eyes. He also had nightmares and flashbacks every day. Levitt opined the children would become "more traumatized if they had to go with the father" and expressed concern it would be hard for them to spend the summer with him.

The court initially ceded jurisdiction to Alabama under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), dismissed the dependency petition

and terminated temporary emergency jurisdiction. But on mother's writ petition we concluded the court had erred in "fail[ing] to hold an evidentiary hearing before" doing so and issued a notice under *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171.

The court reversed its order in November 2011 and held an evidentiary hearing, following which it exercised temporary emergency jurisdiction and set a combined jurisdictional and dispositional hearing on the dependency petition. On the continued date of the hearing, father sought a section 730 evaluation to assess the issue of parental alienation. The court found the request premature because it needed to first determine jurisdiction. It continued the hearing again, contacted the Alabama court, and issued a "Memo to File" indicating the Alabama court "would defer to" the California court's determination on custody.

In the report prepared for the hearing, SSA provided an update from Levitt that the children were "doing well with their day to day activities," which "could be associated with [father] not being in [their] lives." Levitt noted G.T. continued to have "flashbacks especially when he sees someone at the school or at the home who resembles his father." G.T. still feared father, recounting how father had hit him, given A.T. a black eye, and chased mother around with his fist raised. He believed father had hired people to kidnap or spy on him. A.T. also remembered his black eye from father and did not want to see him. Levitt wanted to meet with father before any monitored visits were scheduled and indicated visits would be detrimental to the children at that time.

During the six-week jurisdictional and dispositional hearing, the court accepted SSA reports into evidence and heard testimony from multiple witnesses. Father's proposed witnesses included his adult daughter and son, R. and M., and his ex-wife O.S.

R. would testify father raised her and M. well and did not physically abuse her or O as far as she was aware; but when R. lived with father over 10 years ago, she

saw mother throw things at father with the children present, and on one occasion threaten father with a knife before pointing it at herself. Similarly, M. intended to testify mother threatened to harm herself with a knife once before the children were born and another time in early 2008, which G.T. witnessed. He never saw domestic violence between father and O, and denied any physical abuse occurred. The court excluded the proposed testimonies of R. and M., finding the information "old" or not otherwise relevant to the allegations involving G.T. and A.T.

O proposed to testify about the lack of domestic violence during her marriage to father and that she saw G.T. and A.T. interact with her child during their December 2010 visit. The court found her observations regarding the children's physical appearance during the visit relevant and O subsequently testified she saw no bruises or injuries on the children during the three days she spent with them in December 2010. Nevertheless, G.T. looked sad, and when father was around he would scream, "don't touch me; don't get close to me; don't touch my brother; we don't want to be here."

Father also sought to introduce deposition testimony taken in the Alabama family law case of Major Leonard Baraboi, who likewise had been present during the children's December 2010 visit with father. The court excluded the testimony, finding it did not contain any evidence material to the California proceedings and that no showing had been made Baraboi was unavailable. Further, because Baraboi's deposition testimony "parrots father's testimony," it would provide "very little, if any, assistance to the court."

Father testified that after moving to California, G.T. began saying he wanted to kill himself and father had beaten him. Additionally, when father visited the children in California in March 2010, police cut the visit short because he was accused of forcibly entering the house. The next time he saw the children was that December when they went to Alabama for a 10-day visit. He acknowledged that in the audio recording he provided to SSA the children were screaming and crying as they told him to stay away

and not touch them. Although he denied any domestic violence with mother, he admitted arguing with her in front of G.T. and one time pinning her against the refrigerator because she attacked him with a knife in front of G.T. He also denied spanking, hitting, tripping, or slapping the children.

Levitt, a licensed marriage/family therapist with over 20 years of experience in working with children suffering from PTSD and those affected by parental alienation, had treated the children for over a year by the time of the hearing. She did not believe mother coached the children or that they suffered from parental alienation. Rather, she opined the children suffered PTSD because their fear was "not rehearsed" and it would be difficult for them to "make up" the "shaking," "crying," "avoidance," and "flashbacks."

Levitt explained G.T. and A.T. testified they did not remember certain things because children suffering from PTSD tend to avoid having to remember when asked specifics about a traumatic event and both were "petrified" about having to testify in court. Even if father never hit the children, that would not negate their PTSD that resulted from their fear of father. Both children were afraid father would kidnap them and they would never see their mother again; A.T. also feared G.T. would kill himself and he would lose his brother.

Levitt believed the children still had PTSD symptoms requiring ongoing therapy given father's request for visitation. She opined it would be detrimental to the children to allow visits without a monitor present and it would be important to speak to father prior to any monitored visits in order to set guidelines.

Shoemaker provided therapy and assisted with visits between August and December 2010. She testified although she was concerned about parental alienation, she neither diagnosed the children nor treated PTSD in her practice.

At the close of the evidence, which included testimony from the social worker and the two children, as well as father's 28-minute DVD of the December 2010

visit and the numerous photographs he marked as exhibits, father asked for a section 730 evaluation of all family members to assess the possibility of parental alienation. The court denied the request without prejudice as being unnecessary and unbeneficial in light of the multiple diagnoses of PTSD by Ziegler and Levitt.

The court determined it had proper UCCJEA jurisdiction and found by clear and convincing evidence that the children's welfare required "custody be taken from father" and "remain vested with mother under" SSA's supervision. It ordered the children remain in counseling and enhanced services for father, noting it was important for him to build a relationship with them through monitored visits and telephone calls after he developed some communication skills but that visits with him in New York, where he now lived, would be inappropriate.

DISCUSSION

1. Father's Due Process Rights

Father contends the juvenile court violated his due process rights by not considering relevant testimony from O, R., and M., or the deposition of Baraboi. We disagree.

"While a parent in a juvenile dependency proceeding has a due process right to a meaningful hearing with the opportunity to present evidence [citation], parents in dependency proceedings 'are not entitled to full confrontation and cross-examination.' [Citation.] Due process requires a balance. [Citation.] The state's strong interest in prompt and efficient trials permits the nonarbitrary exclusion of evidence [citation], such as when the presentation of the evidence will 'necessitate undue consumption of time.' [Citation.] The due process right to present evidence is limited to relevant evidence of significant probative value to the issue before the court. [Citations.]" (*Maricela C. v. Superior Court* (1998) 66 Cal.App.4th 1138, 1146-1147.) We will not disturb a trial

court's broad discretion in determining admissibility of evidence unless its ruling is shown to be "'''''''arbitrary, capricious, or patently absurd . . . .''''''' [Citation.]" (*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1176.) If a due process violation occurred, we determine whether "the error was harmless beyond a reasonable doubt." (*In re Mark A.* (2007) 156 Cal.App.4th 1124, 1146.)

"'Although the state and federal Constitutions differ somewhat in determining when due process rights are triggered, once it has been concluded that a due process right exists we balance similar factors under both approaches to decide what process is due. [Citation.] This flexible balancing standard considers "'(1) the private interest that will be affected by the official action, (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, (3) the [dignity] interest in informing individuals of the nature, grounds and consequences of the action and in enabling them to present their side of the story before a responsible governmental official, and (4) the governmental interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.'" [Citation.]' [Citation.]" (*David B. v. Superior Court* (2006) 140 Cal.App.4th 772, 777-778.)

We agree with father he had an "important liberty interest in maintaining custody of" his children (*In re Lucero L.* (2000) 22 Cal.4th 1227, 1247), as well as a "significant dignity interest[] in being fully and fairly able to present [his] side[]" (*In re Malinda S.* (1990) 51 Cal.3d 368, 384, superseded by statute on another ground as stated in *People v. Otto* (2001) 26 Cal.4th 200, 207). But he has not shown he was precluded from telling his "side of the story." To the contrary, he proffered testimony from his first wife O, cross-examined all the witnesses against him, and testified himself, during which he denied physically abusing mother and hitting the children and claimed mother had attacked him with a knife in front of G.T. The court also admitted into evidence

numerous photographs father had marked as exhibits and his DVD of the December 2010 visit.

The other evidence father sought to introduce, i.e., the testimonies of his adult children and Baraboi's deposition testimony, was either cumulative or about events that occurred 10 years prior, which the court had discretion to exclude as irrelevant and requiring an undue consumption of time. (*Maricela C. v. Superior Court*, *supra*, 66 Cal.App.4th at p. 1147.) "'[D]ue process does not require the admissibility of *all* evidence which may tend to exonerate the defendant.' [Citation.]" (*In re Jordan R.* (2012) 205 Cal.App.4th 111, 133.) Because father was allowed to present the relevant facts as he saw them (*Maricela C. v. Superior Court*, *supra*, 66 Cal.App.4th at p. 1147), no violation of his dignity interest occurred.

Nor was a high risk of an erroneous decision created by the court's refusal to allow father present evidence of past conduct. The proposed testimony was cumulative of evidence both parents engaged in domestic violence in front of the children and father's testimony mother had used a knife to attack him. Baraboi's deposition testimony about not seeing any bruises on the children or father physically abusing them during December 2010 visit was likewise cumulative to O's testimony she saw no bruises or injuries on them during the same time period and father's testimony he never hit the children.

As to the final factor, father contends the governmental interest was low because "the fiscal cost would have been deminimus" and it would have only taken a few more hours to have O and his adult children testify. But even if so, the court still had the authority to control its proceedings and exclude irrelevant and cumulative evidence (*Maricela C. v. Superior Court*, *supra*, 66 Cal.App.4th at p. 1147), as well as a "legitimate interest in providing an expedited proceeding to resolve the child's status without further delay" (*In re Malinda S.*, *supra*, 51 Cal.3d at p. 384) and a """fiscal and administrative interest in reducing the cost and burden of [dependency] proceedings"""

(*In re Allison J.* (2010) 190 Cal.App.4th 1106, 1114). Balancing all of the factors, father's due process rights were not violated.

2. Exclusion of Baraboi's Deposition

Father argues the juvenile court erred when it refused to admit Baraboi'a deposition testimony into evidence. The contention lacks merit.

First, the deposition testimony was cumulative of other evidence, as just discussed. Second, father failed to show it was admissible under section 1291, subdivision (a)(2), which provides that former testimony is not rendered inadmissible by the hearsay rule if "the declarant is unavailable as a witness" and "[t]he party against whom the former testimony is offered was a party to the action or proceeding in which the testimony was given and had the right and opportunity to cross-examine the declarant with an interest and motive similar to that which he has at the hearing." Father acknowledges SSA, the petitioner in this proceeding, was not represented at Baraboi's deposition and thus had no opportunity to cross-examine him. That alone defeats father's claim he satisfied section 1291, subdivision (a)(2) and we need not address his contentions he sufficiently showed Baraboi was unavailable.

3. Refusal to Order Section 730 Evaluations

Father asserts the court abused its discretion in refusing to order section 730 psychological evaluations of the entire family because it would have assisted him in establishing parental alienation. We are not persuaded.

"Under . . . section 730, the court may, on its own motion or on motion of any party, appoint one or more experts to investigate, and to testify as an expert, as to any pertinent fact or matter. [Citations.]" (*In re Marriage of Kim* (1989) 208 Cal.App.3d 364, 372.) The decision whether to appoint such an expert is a matter of discretion and refusing to do so where another expert has already "examine[d] a[] particular issue will

ordinarily not constitute abuse of discretion. [Citations.]" (*In re Jennifer J*. (1992) 8 Cal.App.4th 1080, 1084.)

Father acknowledges both Ziegler and Levitt had treated the children and diagnosed them with PTSD. Pham diagnosed G.T. with same during his psychiatric hold. Given the opinions of these mental health professionals, the court reasonably found it did not need the assistance of another expert.

That the court relied on these diagnoses does not mean it "repeatedly refused to consider the parental alienation issue," as father claims. The court had before it testimony from Levitt about the difference between PTSD and parental alienation and her opinion the children suffered from PTSD. Because they exhibited "real fear," she did not believe they suffered from parental alienation or had been "coached" by mother. She did not witness any anxiety consistent with parental alienation. The court was also presented testimony from Shoemaker, who testified about her concern with parental alienation. But Shoemaker also admitted she never diagnosed the children with parental alienation and had only had three counseling sessions with the children. Nor has she ever treated an individual with PTSD. The court took into account these testimonies, counsel's arguments, and the evidence of parental alienation, and reasonably determined it would not be "beneficial at this time to stop and obtain a [section] 730 evaluation."

Father cites three cases in which he asserts the psychological evaluations were "helpful." (See *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, *In re Alexis W.* (1999) 71 Cal.App.4th 28, and *In re John W.* (1996) 41 Cal.App.4th 961, superseded by statute on another point as stated in *In re Marriage of David and Martha M.* (2006) 140 Cal.App.4th 96, 102-103.) But here the court already had the help of several psychologists, including Levitt, who testified she "definitely" did not believe mother had coached the children. Father's argument to the contrary essentially requests this court to reweigh the evidence, which we will not do. Because father has not shown that upon viewing all of the evidence in a light most favorable to the order appealed from,

the court "could [not] have reasonably refrained from ordering" a section 730 evaluation (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1341), no abuse of discretion has been shown.

DISPOSITION

The orders are affirmed.

RYLAARSDAM, J.

WE CONCUR:

O'LEARY, P. J.

BEDSWORTH, J.